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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204777
Party	Plaintiff Apple Inc.
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Submission	Motion to Extend
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Signature	/Joseph Petersen/
Date	12/18/2013
Attachments	2013-12-18 Apple v. Ninja Ent. - Motion to Extend Opposer's Testimony Period for Limited Purposes.pdf(19007 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

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APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
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**MOTION TO EXTEND OPPOSER’S TESTIMONY PERIOD  
FOR LIMITED PURPOSES**

Opposer Apple Inc. (“Apple”) respectfully moves the Board for a further 60-day extension of Apple’s testimony period up to and including March 6, 2014 for the limited purpose of taking the testimony deposition of Thomas R. La Perle and submitting the deposition transcript in this proceeding. This motion is timely filed, is not necessitated by any unreasonable delay on the part of Apple, and is based on good cause for the reasons discussed below.

**BACKGROUND**

On October 25, 2013, Apple filed a motion seeking a 60-day extension of its testimony period for the limited purpose of taking the testimony deposition of Thomas R. La Perle and filing a Notice of Reliance on a certified copy of Apple’s 2012 10-K form. (Dkt. No. 20.) Prior to filing that motion, Apple sought Applicant’s counsel’s consent to a 30-day extension of Apple’s testimony period, but Applicant’s counsel refused to consent to an extension, (*see* Dkt.

No. 21 ¶¶ 2-4), although Applicant did not oppose Apple's motion. After filing its motion on October 25th (which the Board subsequently granted on December 3rd, (Dkt. No. 31)), Apple received and was able to file the certified copy of the 10-K form before the expiration of Apple's testimony period as originally set, (*see* Dkt. No. 25), and Apple diligently sought to schedule and hold Mr. La Perle's testimony deposition as soon as possible. (Dec. 18, 2013 Declaration of J. Petersen ("Petersen Decl.") ¶ 5.)

On November 1, 2013, Apple served on Applicant a Notice of Testimony Deposition of Thomas La Perle, to be held on November 13, 2013 at Apple's offices in Cupertino, California. (*Id.* ¶ 6.) (The location for the deposition was subsequently changed to Apple's offices in Sunnyvale, California, and an Amended Notice of Testimony Deposition was served on Applicant on November 7, 2013.) (*Id.* ¶ 7.) Applicant's counsel advised that he would be unable to attend in person, and Apple made arrangements for Applicant's counsel to participate by phone. (*Id.* ¶ 8.) The following week, on the eve of the scheduled deposition, Applicant's counsel asked Apple to arrange for him to participate by video. (*Id.* ¶ 9.) To accommodate Applicant's counsel's request, Apple agreed to postpone the November 13, 2013 deposition so that it could be rescheduled with video conferencing capabilities, and Applicant's counsel agreed to stipulate to extend Apple's testimony period through January 5, 2014. (*Id.*)

On November 16, 2013, the parties agreed to reschedule Mr. La Perle's deposition for November 21, 2013. (*Id.* ¶ 10.) On November 20, 2013, Applicant's counsel advised that he would be unable to participate in the deposition the next day because of a sudden death in his family. (*Id.* ¶ 11.) Under the circumstances, Apple readily agreed to postpone the deposition. (*Id.*)

Apple emailed Applicant's counsel several times in December requesting dates to reschedule Mr. La Perle's deposition before the Christmas and New Year's holidays but received no response. (*Id.* ¶ 12.) Apple therefore advised Applicant's counsel that Apple would need to seek a further 60-day extension of the testimony period and requested Applicant's consent. (*See id.* ¶ 13.) As of the date of this motion, Applicant's counsel has not responded to Apple's request for consent to this motion or Apple's request for available dates to reschedule the deposition. (*Id.*)

### **ARGUMENT**

Pursuant to Fed. R. Civ. P. 6(b) and 37 C.F.R. § 2.116(a), the Board may grant a timely motion to extend a party's testimony period for good cause. *See Sysco Corp. v. Princess Paper, Inc.*, Cancellation No. 92042937, 2006 WL 752426, at \*2 (Mar. 22, 2006) (“[T]he Board generally is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.”).

Apple's motion is timely because it is filed well prior to the January 5, 2014 closing date of Apple's testimony period as reset in the Board's December 3, 2013 order. Further, Apple is and has been diligent in pursuing its claim and discovery in this proceeding. To complete the evidence Apple intends to file, Apple must take—and obtain and file the transcript of—the testimony deposition of Thomas R. La Perle, Director, Legal, Apple Inc. (disclosed in both Apple's Initial Disclosures and Pretrial Disclosures). (Petersen Decl. ¶ 2.) Apple has scheduled Mr. La Perle's deposition twice with appropriate notice to Applicant, but Apple agreed to postpone both scheduled depositions to accommodate Applicant's counsel. (*Id.* ¶ 5.) Applicant

thereafter has not yet responded to Apple's requests for dates for the rescheduled deposition. (*Id.* ¶ 12.)

### **CONCLUSION**

Based on the good cause established above, Apple respectfully requests a 60-day extension of Apple's testimony period up to and including March 6, 2014 for the limited purpose of taking the testimony deposition of Thomas R. La Perle and submitting the deposition transcript in this proceeding.

This the 18th day of December, 2013.

Respectfully submitted,

### **KILPATRICK TOWNSEND & STOCKTON LLP**

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NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing MOTION TO EXTEND OPPOSER’S TESTIMONY PERIOD FOR LIMITED PURPOSES has been served on Ninja Entertainment Holdings, LLC by sending a copy via e-mail to Daniel Kelman at [danielkelman@gmail.com](mailto:danielkelman@gmail.com) and depositing a copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Daniel Kelman  
1934 Josephine Street  
Pittsburgh, Pennsylvania 15203

This the 18th day of December, 2013.

\_\_\_\_\_  
/s/Allison Scott Roach